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No. 84-1242

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1984

ROYAL VON PUCKETT, PETITIONER,

vs.

THE CITY OF EMMETT, IDAHO RESPONDENT.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the United States

From the Ninth Circuit Court of Appeals

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Respondent

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ARGUMENT FOR DENIAL OF PETITION FOR WRIT OF CERTIORARI

I.

THE PETITIONER WAS NOT DEPRIVED OF ANY PROPERTY IN HIS EMPLOYMENT.

In Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972), and Perry v. Sindermann, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972), this Court recognized that a public employee may have a constitutionally protected pro-

perty interest in his employment of which he cannot be deprived without due process under Fourteenth Amendment of the United States Constitution. In both cases, however, the Court specifically stated that any such property interest was derived from the state law and not from the Fourteenth Amendment itself.

Under Idaho law, a public employee is an employee at will and may be terminated at any time, unless by statute, regulation, ordinance or contract he is guaranteed continued employment or may be terminated only for cause, see, i.e., Kolpe v. Board of Trustees of Butte County Joint School District No. 111, 102 Idaho 320, 629 P.2d 1153 (1981); Jackson v. Minidoka Irrigation District, 98 Idaho 330, 563 P.2d 54 (1977); or unless appointed for specific term, see, Buckalew v. City of Grangeville, 97 Idaho 168, 540 P.2d 1347 (1975).

In the present case, Petitioner was

clearly an employee at will and was not entitled to a hearing at the time of his termination from employment in June, 1980. He had no written contract of employment and was not hired for a specific term. The Respondent City of Emmett had not enacted any merit personnel system for its employees. The only bases on which Petitioner claims a protected property interest are an assumed property interest arising directly from the Fourteenth Amendment and a policy and procedure manual allegedly in effect at the time of his termination. First, the Constitution itself does not create any property interests in continued employment. See, Bishop v. Wood, 426 U.S. 341, 96 S.Ct. 2074, 48 L.Ed.2d 684 (1976); Roth, supra; Perry, supra. Furthermore, the record is clear that no such policy and procedure manual was in force during Petitioners employment with the City of

Emmett, but at best, was only in draft form for consideration at the time of Petitioner's termination and certainly had not been formally adopted by the City at that time.

Thus, the Petitioner has demonstrated no deprivation of a protected property interest in his employment.

II.

THE PETITIONER HAS SUFFERED NO DEPRIVATION OF A LIBERTY INTEREST IN FUTURE EMPLOYMENT.

Bishop v. Wood, supra, states that a discharge from public employment, even if wrongful, is not in and of itself a deprivation of a liberty interest in future employment. In order to establish such a deprivation, the claimant must plead and prove that the reasons for discharge and perhaps pre-termination discipline are false, were publicly disseminated, and stigmatized the employee in his efforts to gain future employment. Codd v. Velger,

429 U.S. 624, 97 S.Ct. 882, 51 L.Ed.2d 92 (1977).

In the present case, the Petitioner has failed to show that any of those three requirements were met. First, the only matter of which he complains here is a reference to a disciplinary action imposed upon the Petitioner and completed by him several months prior to his termination. Petitioner was placed on probation in connection with his rearrest of two individuals on the same misdemeanor charges, a procedure which is not sanctioned by Idaho law. Petitioner has never denied that he caused those rearrests or that he was disciplined. Second, any dissemination of the probation action and Petitioner's subsequent termination from employment and the reasons therefore has been made by the City of Emmett only in the course of judicial proceedings either in

this action, in a pending state court action by Petitioner asserting essentially the same claims, or in a proceeding before the State Industrial Commission in which Petitioner sought unemployment compensation. With the exception of two affidavits filed in defense of the false arrest claims stating only that Petitioner had been disciplined in connection with those claims, all disclosure of the contents of Petitioner's personnel file and the reasons for his probation and termination has been done solely in the defense of litigation instituted by the Petitioner. None of the information was released in connection with his termination. As the Court noted in Bishop, supra, disclosures in this context do not provide a basis for retroactive support of Petitioner's claims, and imposition of liability for such disclosures clearly conflicts with

the policy of full and fair disclosure of information between litigants and the court.

Finally, while Petitioner baldly asserts that these disclosures have stigmatized him because he has not worked in law enforcement since his termination, the record below shows that he did work as a security guard at a local cannery for approximately two years after his termination and that another potential law enforcement employer found no interference by the City in Petitioner's application for employment with him.

Petitioner has thus failed to demonstrate any violation of a protected liberty interest in future employment.

III.

PETITIONER DOES NOT RAISE ANY SIGNIFICANT ISSUE TO JUSTIFY GRANTING HIS PETITION.

Every question presented by the Petition is controlled by a decision of this Court issued within the last several years. There is no demonstrable conflict among the various Circuit Courts of Appeal on these issues, nor has Petitioner attempted to show one. The Petition makes clear that while the incidents alleged are important to the parties, they raise no important issues of federal law which have not previously been decided by this Court.

CONCLUSION

Based upon the foregoing, it is clear that Petitioner was deprived of no cognizable property or liberty interests in his employment and has demonstrated no substantial reason for granting the Petition. The Petition for Writ of Certiorari should be denied.

RESPECTFULLY SUBMITTED this ____

day of _____, 1985.

QUANE, SMITH, HOWARD &
HULL

By _____
Kathryn A. Sticklen,
Of the Firm, Attorneys
for Respondent City
of Emmett, Idaho

AFFIDAVIT OF MAILING

STATE OF IDAHO)
) ss.
County of Ada)

Kathryn A. Sticklen, being first duly sworn, on oath deposes and says:

That she is attorney of record for Respondent in the above-entitled action; that her application for admission to the Bar of this Court was delivered herewith; and that on this _____ day of _____, 1985, she served true and correct copies of the within and foregoing Response to Petition for Writ of Certiorari by depositing the same in the United States mail, at Boise, Idaho, postage prepaid, in an envelope addressed to:

Vernon K. Smith
1900 Main Street
Boise, Idaho 83702

Kathryn A. Sticklen

SUBSCRIBED AND SWORN to before me this _____ day of _____, 1985.

Notary Public for Idaho
Residing at Boise, Idaho